

Serial No. 10/680,904
Attorney Docket No. 300250-40004C
Amendment

REMARKS

The specification has been amended to cross reference to a related application.

Claims 16, 17, 19, 20, 21, 26, 27, 28, 29 and 30 have been amended to more particularly point out and distinctly claim the present invention.

The Examiner objected to the drawings under 37 C.F.R. § 1.83(a). However, in light of the amendments made by this paper, the Examiner's objection is now moot.

The Examiner objected to the specification as failing to provide proper antecedent basis for the claimed subject matter. The objection has been addressed by the amendments made by this paper.

The Examiner objected to claim 17 as being "of improper dependent form." Claim 17 has been amended by this paper and is no longer dependent upon cancelled claim 1.

The Examiner rejected claims 19, 20, 23, 24, 25, 26, 27, 29 and 30 pursuant to 35 U.S.C. § 112 as being indefinite. In response, claims 19, 20, 26, 27, 29 and 30 have been amended, thereby obviating the Examiner's § 112 rejection.

The Examiner rejected claims 16-20, 22-25, 31 and 32 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 6 and 7 of U.S. Patent No. 6,688,515. In response, applicants will file an appropriate terminal disclaimer upon receiving notice of allowable subject matter.

The Examiner rejected claims 16, 31 and 32 under 35 U.S.C. § 102(a) as being anticipated by U.S. Patent No. 6,062,470 to Robichaud (the '470 patent). The '470 patent discloses a package having a tear-away opening. The tear-away opening may be a predetermined area of the top, the entire top, a predetermined area of the flap or the entire flap. *See* col. 1, ll. 44-50. The package is constructed of an outer layer and an inner aseptic layer. *See* col. 1, ll. 35-37. The '470 patent does not disclose a container or a container blank having a partially weakened substrate region that extends across at least a front panel, a first side panel and a rear panel of the container or container blank or a partially weakened substrate region that is dimensioned to align with a fitment. In fact, the '470 patent makes no mention of fitments or

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the concept of attaching fitments to containers.

As the Examiner should be fully aware, anticipation is established only if every limitation of a patent claim identically appears in a single prior art reference. *See Gechter v. Davidson*, 116 F.3d 1454, 1457 (Fed. Cir. 1997). Inasmuch as the ‘470 patent does not disclose a container or a container blank having (1) a partially weakened substrate region that extends at least across a front panel, a first side panel and a rear panel of the container or container blank or (2) a container or container blank having a partially weakened substrate region that is dimensioned to align with a fitment, the ‘470 patent cannot, as a matter of law, anticipate claims 16, 31 and 32.

The Examiner rejected claims 16-18, 21, 22, 26-30 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,101,999 to Robichaud *et al.* (the ‘999 patent) in view of the ‘470 patent. The ‘999 patent discloses a closure mechanism for cartons used in liquid packaging. The closure mechanism includes a base attachable to a top portion of a carton over a scored area designed to produce “bomb bay” doors when the scored area is broken and depressed inwardly by a push-tab connected to the base portion.

In contrast, the present invention teaches a container or container blank having a partially weakened substrate region that extends across at least a front panel, a first side panel and a rear panel. The partially weakened substrate region may be entirely removed (i.e., externally torn) from the container or container blank by hand and provides an opening for easily pouring liquid as well as non-liquid material.

Accordingly, the ‘999 patent has several disadvantages overcome by the present invention. For example, the container disclosed in the ‘999 patent does not permit easy opening, as considerable pressure must be applied to the push-tab to produce the “bomb-bay” doors. Furthermore, the “bomb-bay” doors present a disadvantage in that once the container is opened, the broken scored area remains inside the container and obstructs the opening.

In light of the foregoing, the Examiner’s rejections of claims 16, 31 and 32 under 35 U.S.C. § 102(a) and claims 16, 17, 18, 21, 22, 26, 27, 28, 29 and 30 under 35 U.S.C. § 103(a) are respectfully traversed. It is submitted that the application is in condition for allowance and

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formal notice thereof is respectfully requested.

The applicants hereby authorize the Commissioner under 37 C.F.R. § 1.136(a)(3) to treat any paper that is filed in this application, which requires an extension of time, as incorporating a request for such an extension. The Commissioner is authorized to charge any additional fees required by this paper or to credit any overpayment to Deposit Account No. 20-0809.

Respectfully submitted,



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